

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SETH LOGAN,

Plaintiff,

-v-

9:18-CV-291
(DNH/ML)

SUPERINTENDENT GRAHAM, Auburn
Correctional Facility; C.O. PFLUEGER, Auburn
Correctional Facility; OFFICER SCOTT JONES,
Auburn Correctional Facility, formerly known as
C.O. Smith; and C.O. M. GOULD, Auburn
Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

SETH LOGAN
Plaintiff pro se
177 Avery Avenue
Buffalo, NY 14216

HON. LETITIA JAMES
Attorney General for the State of New York
Attorney for Defendants
300 South State Street
Suite 300
Syracuse, NY 13202

AIMEE COWAN, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Seth Logan brought this civil rights action pursuant to 42 U.S.C.

§ 1983. On November 26, 2019, the Honorable Miroslav Lovric, United States Magistrate

Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part. Specifically, Magistrate Judge Lovric recommended that defendants' motion for summary judgment be denied with respect to plaintiff's retaliation claims against (1) defendant Pflueger for firing plaintiff as a feed up porter, and (2) defendant Graham as Superintendent, and granted with respect to plaintiff's retaliation claims against (1) defendant Jones, (2) defendant Gould, and (3) defendant Pflueger for allegedly (a) filing a false misbehavior report against plaintiff on June 17, 2015, (b) verbally harassing plaintiff, (c) causing defendant Gould to file an improper recommendation of administrative segregation, and (d) destroying plaintiff's property. Defendants timely filed objections to the Report-Recommendation with respect to the retaliation claim against defendant Pflueger and the supervisory claims against defendant Graham.

Based upon a de novo review of the portions of the Report-Recommendation to which defendants objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;
2. The motion is GRANTED with respect to plaintiff's retaliation claims against (1) defendant Jones, (2) defendant Gould, and (3) defendant Pflueger for allegedly (a) filing a false misbehavior report against plaintiff on June 17, 2015, (b) verbally harassing plaintiff, (c) causing defendant Gould to file an improper recommendation of administrative segregation, and (d) destroying plaintiff's property and those claims are DISMISSED;

3. Defendants Jones and Gould are DISMISSED from this action;

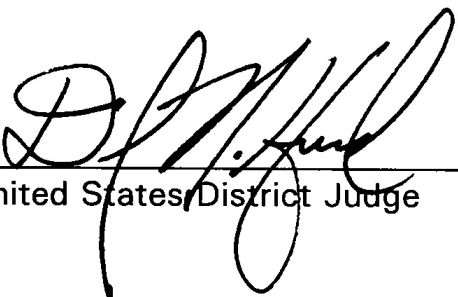
4. The motion is DENIED with respect to plaintiff's retaliation claims against (1) defendant Pflueger for firing plaintiff as a feed up porter, and (2) defendant Graham as Superintendent (relative to defendant Pflueger's alleged retaliatory conduct of firing plaintiff as a feed up porter) and those claims shall proceed to trial;

5. Trial is tentatively scheduled for September 14, 2020 at 9:30 a.m. in Utica, New York. Pre-trial submissions are due on or before August 31, 2020;

6. The parties are reminded that they have the option of referring this case to Magistrate Judge Lovric pursuant to 28 U.S.C. § 636(c) and based on his familiarity with the case, but are free to withhold consent without adverse substantive consequences. The parties are directed to advise the Court on or before April 8, 2020 whether or not a consent to a jury trial before him will be executed; and

7. If plaintiff wishes to renew his motion for the appointment of pro bono trial counsel, he must do so within thirty (30) days of the date of this Decision and Order. If plaintiff makes such a motion, the Clerk is directed to mail him a long form IFP application.

IT IS SO ORDERED.


United States District Judge

Dated: February 21, 2020
Utica, New York.